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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C

Implementation of Sections)
of the Cable Television Consumer)
Protection and Competition Act)
of 1992)
Rate Regulation)

MM Docket No. 92-266

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**CONTINENTAL CABLEVISION'S EMERGENCY PETITION FOR
RECONSIDERATION OF "QUESTIONS AND ANSWERS" OF NOVEMBER 10**

Robert J. Sachs
Senior Vice President for Corporate and
Legal Affairs
CONTINENTAL CABLEVISION, INC.
The Pilot House
Lewis Wharf
Boston, MA 02110
(617) 742-9500

Paul Glist
COLE, RAYWID & BRAVERMAN
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
(202) 659-9750

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The "Questions and Answers" issued by the Commission on November 10 may well lead to unintended consequences. The clarifications, among other things, changed the inflation factor embedded in the Form 393s on which cable operators had calculated regulated rates effective September 1, 1993. The Answer to Question No. 9 will produce needless disruption which may be easily remedied without prejudice to consumers or unjust enrichment to cable operators. The principal effect of the change in the GNP-P1 figure is that virtually every cable system in the country which used the Commission's benchmarks and Form 393 in setting its September 1 rates will now have to change those rates. Literally thousands of cable systems and tens of millions of cable consumers will be affected by this clarification, unless the Commission modifies it as proposed herein.

Filing problems created by the change are also formidable. The OMB-approved Form 393s disseminated into the industry had been incorporated into software throughout the nation. The dominant commercial software -- produced by Economists, Inc. -- has the Form's

Third Quarter 1992 GNP-PI number embedded in the software and is password protected. Spreadsheet programs generated by Continental and other MSOs took similar measures to prevent inadvertent changes in the calculations. Continental had already completed all of its Form 393s prior to the announced change, and, as a practical matter was unable to revise these Forms within the few days afforded by the Commission before the November 15 filing date.¹ In Continental's judgment, granting extensions for operators to "correct" the problem with a supplemental Form 393 filing would be the wrong way to solve the problem. Not only would it require most cable operators to amend their November 15 Form 393 filings, it would do nothing to alleviate the larger problem, i.e. forcing most cable systems in the country to adjust their September 1 rates and to change every rate card, sales, marketing and advertising material that listed those rates.

The Commission should recall that it went out of its way to encourage the cable industry to voluntarily bring cable rates into alignment with the new rules rather than to await the receipt of municipal notices and subscriber complaints. It preempted all notice requirements to permit such adjustments. It collected survey data from the industry to prove to the Congress that its rate regulations were working -- even in advance of the complaint process. The public benefits of that proactive restructuring of rates were enormous. Had Continental and other cable operators not voluntarily restructured and reduced rates September 1, it would have been considerably longer before the effects of rate regulation would have been enjoyed by consumers.

¹The " Questions and Answers on Completion of FCC Form 393 and Associated Filing Requirements" was issued at the end of business hours on November 10, on the eve of a federal holiday, leaving one business day to make revisions prior to the Commission's November 15 filing date.

The 393 Form used by Continental and the rest of the industry to effect that massive rate restructuring was the Commission's own OMB approved Form 393, with the then U.S. Government endorsed GNP-PI number printed on and embedded in the Form. Now, with a single stroke, the Commission has declared that a slightly lower inflation factor must be used. Effectively, the Commission has declared that all rates set in reliance on the Form 393, and in response to quite obvious Commission incentives to make the change, are unlawfully high. As a consequence, every cable operator who worked through the Form will be found to have violated the rate regulations, and will be compelled to revise, notice, and implement new rates and refunds. This is an odd reward for timely, voluntary compliance. The administrative costs of implementing *any* rate change are significant, not to mention the disruptive effects on a company's relationship with its customers.

There is no compelling reason why revisions in Third Quarter 1992 GNP-PI need be made at this time. The Commission's rate regulations already provide a mechanism for taking into account the vagaries of the Department of Commerce's changes in GNP-PI figures. In calculating quarterly external cost increases, operators are permitted to rely on interim figures released by Commerce. At the time of the next rate adjustment for inflation, they are required to true-up the rate to the level commensurate with Commerce's final GNP-PI figures. That is a pragmatic approach which provides a fair mechanism for price adjustments without seeking to constantly revise service prices each time Commerce changes GNP- PI.

The same approach should be followed here. If an operator relied on the GNP-PI figure embedded in the Form 393 when setting its September 1 rates, it should be allowed to continue to use that figure while its September 1 rates are being reviewed. At the time of its next rate adjustment, rates can be trued up (or down) with more current GNP-PI information. This will match the mechanism for externals, and will provide consumers with as prompt a recognition of new GNP-PI figures as is afforded under the remainder of the Commission's rate regulations.

Such an approach is particularly appropriate in present circumstances, because the Commission has frozen rates without doing anything to allow pass through of external cost increases. Property taxes still increase; program costs still increase; and yet the Commission has extended the rate freeze into mid-February, 1994 without making any allowance for these cost increases. It can hardly be considered unfair to provide the modicum of compensation allowed by the embedded GNP-PI figure as an offset to such increased expenses, when the Commission has frozen any other means for cost recovery.

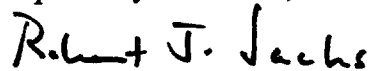
Finally, as noted in the Commission's November 10 Rate Freeze Order, the Commission is currently reviewing on reconsideration whether further changes to the benchmark scheme are warranted. If so, the Commission has indicated that it "will provide for appropriate transition mechanisms."²

²Order in MM Docket 92-266, FCC 93-494 at ¶7 n. 15 (Nov. 10, 1993).

In view of the possibility of yet further changes in the Commission's benchmarks, cable operators should be permitted to maintain the rates set using the Commission's Form 393 and not be required to implement yet another rate adjustment before the Commission resolves other outstanding benchmark issues.

For the foregoing reasons, the Commission should revise its November 10 clarification, and permit operators who relied on the embedded Third Quarter 1992 GNP-PI figure in establishing their September 1, 1993 rates to continue to do so during the defense of that rate; provided that revised GNP-PI figure will be used when rates are next adjusted for inflation.

Respectfully submitted,



Robert J. Sachs
Senior Vice President for Corporate and Legal Affairs
CONTINENTAL CABLEVISION, INC.
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Boston, MA 02110
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